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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206915
Party	Plaintiff mybody, L.L.C.
Correspondence Address	JENNIFER L LEFERE HOOL LAW GROUP PLLC 2398 E CAMELBACK RD, SUITE 1020 PHOENIX, AZ 85016 UNITED STATES uspto@hoollawgroup.com
Submission	Motion to Compel Discovery
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Date	10/11/2013
Attachments	Opposition 91206915 Motion to Compel Discovery.pdf(796899 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No.: 85/597,114
Published in the Official Gazette on August 28, 2012

MYBODY, L.L.C.

Opposer,

vs.

ERIC LUCAS

Applicant.

Opposition No.: 91206915

**OPPOSER'S MOTION TO
COMPEL AND MOTION TO
EXTEND DISCOVERY AND
TRIAL DATES**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 37 of the Federal Rules of Civil Procedure, Opposer, MyBody L.L.C., respectfully moves the Board for an order compelling Applicant, Eric Lucas, to respond to Opposer's First Set of Interrogatories and Opposer's Second Set of Interrogatories to Applicant.

Such an order is appropriate because Applicant has failed entirely to respond to Opposer's Interrogatories and Document Requests. Counsel for Opposer has made repeated good faith efforts to resolve the issues with Applicant, but, to date, such efforts have been unsuccessful.

I. BACKGROUND.

On September 10, 2012, Opposer filed a Notice of Opposition against Application Serial No. 85/597,114 for the MY HERO mark for "cosmetic preparations" (the "Opposed Application") Opposer owns the distinctive mark shown in Application No. 85/695,722 for the myHERO for skin creams (the "MYHERO Mark"). Opposer has extensively used and promoted the MYHERO Mark in the United States since January 28, 2011, well prior to Opposer filing the Opposed Application (Not. Of Opp ¶ 2-6). As grounds for opposition, Opposer alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). (Not. Of Opp ¶ 7-12).

On September 10, 2012, the Board instituted this proceeding and set discovery to open on November 19, 2012, and to close on May 18, 2013. Applicant's Answer was due October 20, 2012.

On October 20, 2012, Applicant filed an answer denying the essential allegations in the Notice of Opposition.

On February 11, 2013, Opposer served the Applicant with Opposer's First Request for Production of Documents and Opposer's First Set of Interrogatories to Applicant (collectively, the "First Requests"). (Copies of these First Requests are attached as Exhibit A.) Responses to Opposer's Requests were due March 11, 2013.

On February 12, 2013, Opposer filed a Stipulated Protective Order with the Board and the Board subsequently approved the Stipulated Protective Order on March 7, 2013. The Stipulated Protective Order provided the parties could exchange sensitive information strictly between the attorneys.

On March 18, 2013, Applicant served Opposer with Applicant's responses to the First Requests, wherein Applicant stated it would provide certain documentation and information "Attorneys Eyes Only" as provided in the Stipulated Protective Order.

On April 16, 2013, the parties stipulated to a discovery extension, Opposer filed a stipulated Motion for an Extension of Discovery, which extended the close of Discover to August 16, 2013.

On June 5, 2013, Opposer served the Applicant with Opposer's Second Set of Interrogatories to Applicant (the "Second Requests"). The responses to Opposer's Second Requests were due July 5, 2013. (Copies of the Second Requests are attached as Exhibit B).

On July 5, 2013, Applicant's counsel contacted Opposer requesting an additional extension within which to respond to Applicant's First Requests and Second Requests, as well as extend the close of Discovery.

On July 5, 2013, Opposer agreed to give Applicant an extension of time until September 15, 2013, to respond to the Second Requests and to provide the previously omitted information from the First Requests. As part of the agreement, the parties also agreed to extend the deadline for expert disclosures to October 15, 2013, and the close of Discovery to November 15, 2013.

On July 8, 2013, Opposer filed a stipulated Motion for an Extension of Discovery, which extended the close of Discover to November 15, 2013.

On September 20, 2013, Opposer corresponded with counsel for Applicant to inquire as to the status of the responses to the First Requests and the Second Requests. Applicant did not respond to that request. On October 9, 2013, Opposer again corresponded by email to Applicant's counsel, who indicated he would provide responses by end of day October 9, 2013. As of October 11, 2013, Opposer had still not received a response to the omitted portions of the First Requests nor had it received responses to Opposer's Second Requests.

II. MOTION TO COMPEL.

A. Opposer Has Made a Good Faith Effort to Work With Applicant. In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion. Specifically, Opposer has given Applicant ample extensions of time to respond to the First Requests and the Second Requests. As detailed above, Applicant has not responded to the outstanding First Requests and Second Requests.

B. Applicant Forfeited its Right to Object. The Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) provides that a party which fails to respond to discovery interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. *See* TBMP§ 403.03.

Applicant’s discovery responses were due on or before September 15, 2013. Accordingly, Opposer respectfully requests that the Board order Applicant to fully respond to Opposer’s First Requests and Second Requests *without objection* within twenty (20) days from the mailing date of the Board’s order on this motion.

III. MOTION TO EXTEND.

In accordance with Fed. R. Civ. P. 6(b), Opposer hereby moves the Board for a sixty (60) day extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant’s discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer also requests an extension of the testimony periods.

As detailed above, Opposer has been diligent during the discovery period. Opposer served its First Requests and Second Requests allowing ample time for Applicant to respond.

Opposer also made a good faith effort and further extended the discovery and trial dates and contacted Applicant inquiring as to the receipt of the responses to the First Requests and the Second Requests before filing a motion to compel. Applicant has not yet responded.

Opposer does not seek an extension of time for purposes of delay. It is requested that the limited sixty (60) day extension run from the date of service of Applicant’s discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Opposer also requests an extension of the testimony period to follow the re-set discovery period.

IV. CONCLUSION.


For the reasons stated above, Opposer respectfully requests that the Board grant Opposer’s motion to compel and order Applicant to respond to Opposer’s First Requests and Opposer’s Second

Requests *without objections* within twenty (20) days from the mailing date of the Board's ruling on the motion. Opposer also respectfully requests that the Board grant Opposer's motion for an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer requests that the extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Opposer requests that the testimony period be re-set to follow close of discovery.

Respectfully submitted,

Attorneys for MyBody, LLC

Dated: October 11, 2013.


By: 

Michael D. Hool
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of October, 2013, a true and correct copy of Opposer's First Set of Interrogatories to Applicant was deposited with the United States Postal Service, as first class mail, postage prepaid to:

Damon L. Ward
Ward Law Group
301 Fourth Avenue S
378 Grain Exchange Bldg
Minneapolis, MN 55415-1015

By: 
Heidi Abdul
Paralegal

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Opposer,

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Applicant.

Opposition No.: 91206915

**OPPOSER'S FIRST SET OF
INTERROGATORIES TO
APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer, MyBody L.L.C., hereby requests that Applicant, Eric Lucas, answer the following interrogatories in writing under oath within thirty (30) days of service hereof.

INSTRUCTIONS

These interrogatories seek answers as of the date of response, and those requests set forth below that address matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information as to those requests in any way.

In answering these interrogatories, please furnish all information known or available to Applicant including, without limitation, information available to Applicant, its employees, representatives, investigators, attorneys or other agents, or to Applicant's attorneys or their employees, representatives, investigators or other agents.

If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure the information necessary to do so, please so state and answer each interrogatory to the fullest extent possible, specify the portion of each interrogatory that you claim you are unable to answer fully and completely, state the facts upon which you rely to support your contention that you are unable to answer the interrogatory fully and completely, and state what knowledge, information or belief you have concerning the unanswered portion of each such interrogatory.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1. “Applicant,” “you” and “your” means the Applicant in this Opposition, and his employees, representatives, investigators, attorneys or other agents.
2. “Applicant’s Mark” means Applicant’s MY HERO mark Serial No.: 85/597,114, unless otherwise modified.
3. “Application” means the Trademark Application Serial Number 85/597,114 challenged in this Opposition.
4. “Opposer” means MyBody, L.L.C., the Opposer in this Opposition, and its employees, representatives, investigators, attorneys or other agents.
5. “Opposer’s Mark” means the Opposer’s MYHERO mark including its U.S. Serial No. 85/695,722.
6. 4. The terms “document” and “documents” means everything that is contemplated by Fed.R.Civ.P. 34 including each and every original or copy of words or information generated, fixed, recorded or preserved by any means, including by printing, typing, long hand, photographing, photostating, magnetic, digital or electronic recording and

any non-identical copies. Documents include working papers, preliminary, intermediate or final drafts, correspondence, memoranda, notes, records of any sort of meetings, reports of telephone or oral conversations, financial statements, invoices, financial calculations, diaries, appointment books, audio and video recording, electronic mail, voice mail, facsimiles, postings, profiles, walls, comments, pictures, videos, blogs, messages and other sources of medial media information likely to contain relevant information, computer disks, computer printouts and all other writings and recordings of every kind that are in your actual or constructive possession, custody or control that can be located or discovered by a reasonably diligent search.

7. The terms “communication” or “communications” mean the transmittal of information by any means including any of the following: (1) any written letter, memorandum, or other document; and (2) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

8. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular.

9. “Any” or “each” means “any and all;” “all” means “any and all.” “And” and “or” include and encompass both “or” and “and.” “Including” means “including but not limited to.”

10. Words in the masculine, feminine or neuter form shall include each of the other genders.

11. The term “person” means any individual, corporation, proprietorship, partnership, firm, legal or governmental entity or association.

12. The term “related to,” “relating to” or “relate to” mean constituting, concerning, containing, describing, reflecting, identifying, stating, supporting, contradicting, evidencing, referring, discussing or in any way logically or factually connected with a particular fact.

13. “Date” means the exact day, the month and the year. If only the approximate date is known or available to you, please state the approximate date, indicating that it is an approximation only.

14. “Dealer” means distributors, wholesalers, retailers and any and all other persons who have distributed, bought, sold, offered for sale, or are under contract to distribute, purchase or sell Applicant’s good or services offered or sold under Applicant’s Mark.

15. “Identify” means, unless otherwise qualified in a particular interrogatory, (1) when used in reference to a natural individual, to state the individual’s full name, present business address and telephone, and present or last known position and business affiliation, or if none, then the present home address and telephone number; (2) when used in reference to a company, to state its full name and the present or last known address of its principal place of business; (3) when used in relation to an officer, director or employee of Applicant, to state the person’s full name, title or position and how long such title or position has been held; and (4) when used in reference to a document, to state:

(a) The type of document (e.g., contract, letter, recording, memorandum, etc.);

(b) The title, if any;

(c) The substance of its contents;

(d) The date and place of its preparation;

(e) If it is in the nature of a communication:

- (i) The date and place it was sent;
- (ii) The date and place it was received;
- (iii) The identity of the sender;
- (iv) The identity of the receiver;
- (v) The identity of each person for whom the sender or receiver acted or purported to act;
- (vi) The identity of all persons signing it, preparing or making it, or participating in or present at its preparation, making or signing; and
- (vii) The identity of all persons having custody of the document and if the present location of the document is unknown, the last known location of the document and any available information as to the disposition of the document or its whereabouts.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all searches, investigations, evaluations, comparisons and/or reports conducted by or on behalf of Applicant in connection with its decision to file a trademark application for Applicant's Mark and identify the date on which those searches were conducted.

INTERROGATORY NO. 2: (a) Identify all persons who approved the selection of Applicant's mark. (b) Describe the specific reasons for the selection of Applicant's Mark.

INTERROGATORY NO. 3: Identify all persons with knowledge as to any promotion, offer or intent to offer any products under Applicant's Mark.

INTERROGATORY NO. 4: State the basis for Applicant's bona fide intent to use Applicant's Mark for the goods listed in the Application for the Applicant's Mark.

INTERROGATORY NO. 5: Identify the specific product, qualities or features of the goods covered by the description "cosmetic preparations" as stated in the Application.

INTERROGATORY NO. 6: State the current or anticipated price for each product offered or intended to be offered under Applicant's Mark.

INTERROGATORY NO. 7: Identify the types of customers to whom Applicant has promoted, or to whom Applicant intends to promote, each product offered or intended to be offered under Applicant's Mark.

INTERROGATORY NO. 8: Identify each store, outlet and website from which products offered or intended to be offered under Applicant's Mark are sold and/or offered for sale.

INTERROGATORY NO. 9: Identify any agreements (assignments, licenses, distributorships, authorizations, permissions or consents) entered into by Applicant regarding any use or prospective use of Applicant's Mark.

INTERROGATORY NO. 10: State all relevant facts and circumstances concerning when Applicant first learned of Opposer's Mark.

INTERROGATORY NO. 11: State all relevant facts and circumstances concerning when Applicant first learned of Opposer.

INTERROGATORY NO. 12: Identify the channels of trade Applicant uses or intends to use to promote and sell products offered or intended to be offered under Applicant's Mark

INTERROGATORY NO. 13: Identify the actual and/or anticipated purchasers or users of products offered or intended to be offered under Applicant's Mark. As used in this interrogatory "purchaser or users" refer to any class of purchasers or users, such as may be identified by industry, business, individual or trade category.

INTERROGATORY NO. 14: Identify all of your Dealers and intended Dealers, the locations of your Dealers and intended Dealers, and the total amount of sales by month and in dollars to each Dealer.

INTERROGATORY NO. 15: Identify all uses or intended uses of Applicant's Mark on the Internet.

INTERROGATORY NO. 16: Identify and describe any inquiries and communications Applicant has received regarding any association, affiliation and relationship with Opposer.

INTERROGATORY NO. 17: Describe all facts that form the basis for Applicant's denial in paragraph three of Applicant's Answer.

INTERROGATORY NO. 18: Describe all facts that form the basis for Applicant's denial in paragraph eight of Applicant's Answer.

INTERROGATORY NO. 19: Describe all facts that form the basis for Applicant's denial in paragraph nine of Applicant's Answer.

INTERROGATORY NO. 20: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 14 of Applicant's Answer.

INTERROGATORY NO. 21: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 16 of Applicant's Answer.

INTERROGATORY NO. 22: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 17 of Applicant's Answer.

INTERROGATORY NO. 23: State in detail, not in summary fashion, each and all facts which support and/or provide a basis for Applicant's Affirmative Defense as stated in paragraph 18 of Applicant's Answer.

INTERROGATORY NO. 24: Identify each person who has supplied documents or information for or participated in Applicant's responses and document production in response to

Opposer's First Request for Production of Documents from Applicant served simultaneously herewith.

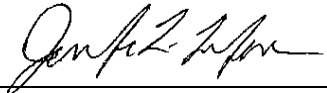
INTERROGATORY NO. 25: Identify each person who has participated in or supplied information for Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

INTERROGATORY NO. 26: Identify each person who has participated in or supplied information for Applicant's responses to Opposer's First Requests for Admissions served simultaneously herewith.

Respectfully submitted,

Attorneys for MyBody, LLC

Dated: February 11, 2013.


By: 

Jennifer L. Lefere
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2013, a true and correct copy of Opposer's First Set of Interrogatories to Applicant was deposited with the United States Postal Service, as first class mail, postage prepaid to:

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**OPPOSER'S FIRST SET OF
REQUESTS FOR
PRODUCTION OF
DOCUMENTS FROM
APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer, MYBODY, L.L.C. ("Opposer") hereby requests that Applicant, ERIC LUCAS ("Applicant") produce the documents listed below for inspection and copying at the offices of the Hool Law Group, PLC, 2398 East Camelback Road, Suite 1020, Phoenix, Arizona 85016, within thirty (30) days of the date of service of this Request.

INSTRUCTIONS

These requests seek documents as of the date of response, and those requests set forth below that address matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further responses and documents promptly after Applicant has acquired additional knowledge or information to those requests in any way. If you decline to produce any requested document, state the reasons and identify its author(s), recipient(s), persons to whom copies were furnished and job title of all persons, date of the document and subject matter of the document. To the

extent you consider any of the following requests objectionable, respond to so much of each request and each part of the request which is not objectionable in your view, and separately state that part of each request which is objectionable and the ground for each objection. You are requested to produce all responsive documents and tangible things in your possession, custody or control, including all responsive documents and tangible things in the possession, custody or control of your affiliates, subsidiaries and attorneys.

DEFINITIONS

In addition to terms defined elsewhere in this request, the following terms have the following meanings:

1. “Application” means the Trademark Application Serial Number: 85/597,114 challenged in this Opposition.
2. “Applicant’s Mark” means Applicant’s MY HERO mark Serial No. 85/597,114, unless otherwise modified.
3. “Dealer” means distributors, wholesalers, retailers and any and all other persons who have distributed, bought, sold, offered for sale or sold, or are under contract to distribute, purchase or sell Applicant’s good or services offered or sold under Applicant’s Mark.
4. The terms “document” and “documents” means everything that is contemplated by Fed.R.Civ.P. 34 including each and every original or copy of words or information generated, fixed, recorded or preserved by any means, including by printing, typing, long hand, photographing, photostating, magnetic, digital or electronic recording and any non-identical copies. Documents include working papers, preliminary, intermediate or final drafts, correspondence, memoranda, notes, records of any sort of meetings, reports of telephone or oral conversations, financial statements, invoices, financial calculations, diaries, appointment books,

audio and video recording, electronic mail, voice mail, facsimiles, postings, profiles, walls, comments, pictures, videos, blogs, messages and other sources of medial media information likely to contain relevant information, computer disks, computer printouts and all other writings and recordings of every kind that are in your actual or constructive possession, custody or control that can be located or discovered by a reasonably diligent search.

5. The terms “communication” or “communications” mean the transmittal of information by any means including any of the following: (1) any written letter, memorandum, or other document; and (2) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

6. “Opposer’s Mark” means the Opposer’s MYHERO mark including its U.S. Serial No. 85/695,722.

7. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “Any” or “each” means “any and all;” “all” means “any and all.”

8. “And” and “or” include and encompass both “or” and “and.” “Including” means “including but not limited to.”

9. Words in the masculine, feminine or neuter form shall include each of the other genders.

10. The term “person” means any individual, corporation, proprietorship, partnership, firm, legal or governmental entity or association.

11. The term “related to,” “relating to” or “relate to” mean constituting, concerning, containing, describing, reflecting, identifying, stating, supporting, contradicting, evidencing, referring, discussing or in any way logically or factually connected with a particular fact.

12. Any document withheld in responding to these requests on the ground of privilege should be identified by the author(s), recipient(s), and person(s) to whom copies were furnished, together with the job titles of all such persons, the date of the document, the subject matter of the document and the nature of the privilege claims.

DOCUMENTS REQUESTED

REQUEST FOR PRODUCTION NO. 1. All documents identified by you in response to Opposer's First Set of Interrogatories served simultaneously herewith.

REQUEST FOR PRODUCTION NO. 2. All documents used or referred to by you in preparing your responses to Opposer's First Set of Interrogatories served simultaneously herewith.

REQUEST FOR PRODUCTION NO. 3. All documents that relate to Applicant's selection of Applicant's Mark for registration and use as a trademark.

REQUEST FOR PRODUCTION NO. 4. All documents demonstrating any use of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 5. All searches related to the selection of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 6. All documents relating to any searches undertaken by Applicant in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 7. All documents that describe or discuss the nature, function or features of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark including instructions and ingredients.

REQUEST FOR PRODUCTION NO. 8. All documents that relate to all use and planned or intended uses of Applicant's Mark in connection with the advertisement, promotion

or marketing of products or services including sales brochures, promotional materials, business plans, displays and advertisements.

REQUEST FOR PRODUCTION NO. 9. All documents that relate to the channels of trade Applicant has used, or intends to use, for any goods or services offered or to be offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 10. All documents that identify or relate to any market or markets to which Applicant intends to or does promote, offer or sell goods and services under Applicant's Mark including customer lists, market identifications, market analyses or market studies.

REQUEST FOR PRODUCTION NO. 11. All documents that identify or are related to the actual purchasers of goods and services offered or intended to be offered under Applicant's Mark including customer lists, market identifications, market analyses, market surveys or market studies.

REQUEST FOR PRODUCTION NO. 12. All documents that identify or are related to the end-users of goods and services offered or intended to be offered under Applicant's Mark including customer lists, market identifications, market analyses or market studies.

REQUEST FOR PRODUCTION NO. 13. All documents that relate to any challenges to Applicant's right to own or use Applicant's Mark.

REQUEST FOR PRODUCTION NO. 14. All documents that relate to Applicant's knowledge of Opposer or Opposer's Marks.

REQUEST FOR PRODUCTION NO. 15. All documents from trade shows or other industry events that Applicant attended and at which Applicant used Applicant's Mark.

REQUEST FOR PRODUCTION NO. 16. All documents that reference the price or

anticipated price of the goods identified in the Application.

REQUEST FOR PRODUCTION NO. 17. All documents sufficient to identify any confusion resulting from the use of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 18. All documents that identify the features of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 19. All documents that identify the function of any goods and services that Applicant intends to offer, render, provide or market under Applicant's Mark.

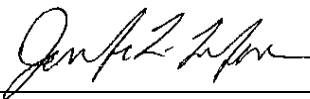
REQUEST FOR PRODUCTION NO. 20. All documents that identify your Dealers and intended Dealers.

REQUEST FOR PRODUCTION NO. 21. All documents relating to the price or anticipated price of the products and services with which Applicant uses or intends to use Applicant's Mark.

Respectfully submitted,

Attorneys for MyBody, LLC

Dated: February 11, 2013.

By: 
Jennifer L. Lefere
HOOL LAW GROUP, PLC
Suite 1020
2398 East Camelback Road
Phoenix, Arizona 85016
(602) 852-5580

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Damon L. Ward
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301 Fourth Avenue South
378 Grain Exchange Building
Minneapolis, MN 55415

By: Heidi L. Abdul
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Paralegal

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INSTRUCTIONS

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In answering these interrogatories, please furnish all information known or available to Applicant including, without limitation, information available to Applicant, its employees, representatives, investigators, attorneys or other agents, or to Applicant's attorneys or their employees, representatives, investigators or other agents.

If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure the information necessary to do so, please so state and answer each interrogatory to the fullest extent possible, specify the portion of each interrogatory that you claim you are unable to answer fully and completely, state the facts upon which you rely to support your contention that you are unable to answer the

interrogatory fully and completely, and state what knowledge, information or belief you have concerning the unanswered portion of each such interrogatory.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1. “Applicant,” “you” and “your” means the Applicant in this Opposition, and his employees, representatives, investigators, attorneys or other agents.

2. “Applicant’s Mark” means Applicant’s MY HERO mark Serial No.: 85/597,114, unless otherwise modified.

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4. “Opposer” means MyBody, L.L.C., the Opposer in this Opposition, and its employees, representatives, investigators, attorneys or other agents.

5. “Opposer’s Mark” means the Opposer’s MYHERO mark including its U.S. Serial No. 85/695,722.

6. 4. The terms “document” and “documents” means everything that is contemplated by Fed.R.Civ.P. 34 including each and every original or copy of words or information generated, fixed, recorded or preserved by any means, including by printing, typing, long hand, photographing, photostating, magnetic, digital or electronic recording and any non-identical copies. Documents include working papers, preliminary, intermediate or final drafts, correspondence, memoranda, notes, records of any sort of meetings, reports of telephone or oral conversations, financial statements, invoices, financial calculations, diaries, appointment books, audio and video recording, electronic mail, voice mail, facsimiles, postings, profiles, walls, comments, pictures, videos, blogs, messages and other sources of medial media information likely to contain relevant information, computer disks, computer printouts and all other writings and recordings of every kind that are in your actual or constructive possession, custody or control that can be located or discovered by a reasonably diligent search.

7. The terms “communication” or “communications” mean the transmittal of information by any means including any of the following: (1) any written letter, memorandum, or other document; and (2) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

8. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular.

9. “Any” or “each” means “any and all;” “all” means “any and all.” “And” and “or” include and encompass both “or” and “and.” “Including” means “including but not limited to.”

10. Words in the masculine, feminine or neuter form shall include each of the other genders.

11. The term “person” means any individual, corporation, proprietorship, partnership, firm, legal or governmental entity or association.

12. The term “related to,” “relating to” or “relate to” mean constituting, concerning, containing, describing, reflecting, identifying, stating, supporting, contradicting, evidencing, referring, discussing or in any way logically or factually connected with a particular fact.

13. “Date” means the exact day, the month and the year. If only the approximate date is known or available to you, please state the approximate date, indicating that it is an approximation only.

14. “Dealer” means distributors, wholesalers, retailers and any and all other persons who have distributed, bought, sold, offered for sale, or are under contract to distribute, purchase or sell Applicant’s good or services offered or sold under Applicant’s Mark.

15. “Identify” means, unless otherwise qualified in a particular interrogatory, (1) when used in reference to a natural individual, to state the individual’s full name, present business address and telephone, and present or last known position and business affiliation, or if none, then the present home address and telephone number; (2) when used in reference to a company, to state its full name and the present or last known address of its principal place of business; (3) when used in relation to an officer, director or employee of Applicant, to state the person’s full name, title or position and how long such title or position has been held; and (4) when used in reference to a document, to state:

(a) The type of document (e.g., contract, letter, recording, memorandum, etc.);

(b) The title, if any;

(c) The substance of its contents;

(d) The date and place of its preparation;

- (e) If it is in the nature of a communication:
- (i) The date and place it was sent;
 - (ii) The date and place it was received;
 - (iii) The identity of the sender;
 - (iv) The identity of the receiver;
 - (v) The identity of each person for whom the sender or receiver acted or purported to act;
 - (vi) The identity of all persons signing it, preparing or making it, or participating in or present at its preparation, making or signing; and
 - (vii) The identity of all persons having custody of the document and if the present location of the document is unknown, the last known location of the document and any available information as to the disposition of the document or its whereabouts.

INTERROGATORIES

INTERROGATORY NO. 27: Identify the exact date of first use of Applicant's Mark in commerce, as defined in TMEP §901.01.


INTERROGATORY NO. 28: Identify the exact date of first use of Applicant's Mark in interstate commerce as defined in TMEP §901.03.

INTERROGATORY NO. 29: Identify the manner in which Applicant's Mark was used on the date specified in your answer to Interrogatory No. 27 above.

INTERROGATORY NO. 30: Identify the manner in which Applicant's Mark was used on the date specified in your answer to Interrogatory No. 28 above.

Respectfully submitted,

Attorneys for MyBody, LLC

By: 


Michael D. Hool
HOOL LAW GROUP, PLC
2398 East Camelback Road, Suite 1020
Phoenix, Arizona 85016
(602) 852-5580

Dated: June 5, 2013.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of June, 2013, a true and correct copy of Opposer's First Set of Interrogatories to Applicant was deposited with the United States Postal Service, as first class mail, postage prepaid to:

Damon L. Ward
Ward Law Group
301 Fourth Avenue S
378 Grain Exchange Bldg
Minneapolis, MN 55415-1015

By: 
Heidi Abdul
Paralegal